BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

GEORGE M. KIDWELL)
Claimant VS.)))) Docket No. 206 799
CITY OF CHANUTE) Docket No. 206,788
Respondent AND	}
KANSAS EASTERN REGIONAL INSURANCE TRUST Insurance Carrier	

ORDER

Respondent appeals from a March 14, 1996 preliminary hearing Order wherein Administrative Law Judge Shannon S. Krysl awarded claimant preliminary benefits.

<u>Issues</u>

- (1) Did claimant meet with personal injury by accident arising out of and in the course of his employment on the dates alleged?
- (2) Did claimant give timely notice of injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds claimant has met his burden of proving that he suffered an aggravation of his preexisting back condition as a result of his work with respondent. The medical reports of the treating orthopedic surgeon, William L. Dillon, M.D., support this conclusion as does the testimony of the claimant. Furthermore, there is no medical expert testimony directly challenging Dr. Dillon's opinion in this regard.

Claimant alleges that he sustained injury each and every day worked from December 1994 through to his last day of work on July 17, 1995. He testified to a progressive worsening of his low back condition during this period which ultimately led to his low back surgery in October of 1995. Therefore, for notice to be timely it must have been given within 10 days of this period.

Respondent's internal procedures required its employees to file a written report of accident within three days. Claimant did fail to file a written report of accident with respondent. Nevertheless, claimant testified he gave verbal notice to his foreman on several occasions. That testimony is uncontroverted in the record as it currently stands. The foreman, Ron Hanks, did not testify at the preliminary hearing. The evidence shows claimant complied with Kansas law. K.S.A. 44-520.

The Appeals Board finds that claimant has established a work-related injury and that notice was timely given.

WHEREFORE, the March 14, 1996 Order of Administrative Law Judge Shannon S. Krysl is affirmed.

IT IS SO ORDERED.

Daled lills day of May 199	Dated this	day of May 1996
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BOARD MEMBER

c: William Phalen, Pittsburg, KS Frederick J. Greenbaum, Kansas City, KS Shannon S. Krysl, Administrative Law Judge Philip S. Harness, Director